



NUCLEAR ENERGY INSTITUTE

Felix M. Killar, Jr.
DIRECTOR,
Material Licensees
Direct Line 202.739.8126
Direct Fax: 202.533-0157
Internet fmk@nei.org

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Dockets Management System
U.S. Department of Transportation
Research and Special Programs Administration
Room PL 401
400 Seventh Street, SW
Washington, DC 20590-0001

REFERENCE: Request for Comments on Application by Société Air France for an Administrative Determination Whether Federal Hazardous Materials Transportation Law Preempts Requirements of the City of Houston, Texas, Relating to the Interim Storage of Hazardous Material During Transportation. (Docket No. RSPA-03-16456) [68 Fed. Reg. 64413, November 13, 2003]

Dear Sir or Madam:

The Nuclear Energy Institute (NEI)¹ is submitting the following comments on the application by Société Air France for an administrative determination whether federal hazardous materials transportation law preempts requirements of the City of Houston, Texas relating to the interim storage of hazardous material during transportation.

NEI, in part, supports the application by Société Air France for the conditions identified in the *Federal Register* notice. The storage of hazardous materials at the George Bush Intercontinental Airport falls within the provisions of HM-223 final rule which applies to transportation functions including "storage incidental to movement." Therefore, the requirements imposed by the city of Houston are preempted by the federal regulations under 49 U.S.C. 5125. HM-223 includes requirements for handling, separation and isolation of hazardous materials while in transport, as well as when in storage incident to transport.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

The City of Houston Fire Department may have valid reasons to seek to assemble information on hazardous materials in storage as well as establish building requirements. However, in a case as this, the collection of this information and any associated building requirements must be in accordance with the U.S. Department of Transportation (DOT) regulations concerning hazardous materials in storage incident to transport. To do otherwise would violate federal law, and this is preempted. Therefore, the City of Houston must revise its hazardous materials while in transit regulations to conform with DOT requirements.

We would be pleased to discuss these comments with the DOT and to respond to questions you may have.

Sincerely,



Felix M. Killar, Jr.

c: NEI Transportation Task Force Members

I certify that copies of these comments have been sent to the following:

Michael F. Goldman, Esq.
Counsel for Soci  t   Air France
Silverberg, Goldman & Bickoff, L.L.P.
1103 30th Street, NW
Suite 120
Washington, DC 20007

Randy Rivin, Esq.
Legal Department
City of Houston
P.O. Box 1562
Houston, TX 77251-1652